IN THE

Supreme Court of the United States

[illegible] R., CLERK

October Term, 1974

[No. 74-80]

GEORGE F. KUGLER, JR., Attorney General of the State of New Jersey, JOSEPH A. HAYDEN, JR., Deputy Attorney General of the State of New Jersey, CHIEF JUSTICE JOSEPH A. WEINTRAUB, ASSOCIATE JUSTICES NATHAN L. JACOBS, HAYDN PROCTOR, FREDERICK W. HALL, WORRALL F. MOUNTAIN, JR., and MARK A. SULLIVAN, of the Supreme Court of New Jersey, and THE STATE OF NEW JERSEY,

Petitioners,

vs.

EDWIN H. HELFANT,

Respondent.

[No. 74-277]

EDWIN H. HELFANT,

Cross-Petitioner,

vs.

GEORGE F. KUGLER, JR., Attorney General of the State of New Jersey, JOSEPH A. HAYDEN, JR., Deputy Attorney General of the State of New Jersey, CHIEF JUSTICE JOSEPH A. WEINTRAUB, ASSOCIATE JUSTICES NATHAN L. JACOBS, HAYDN PROCTOR, FREDERICK W. HALL, WORRALL F. MOUNTAIN, JR., and MARK A. SULLIVAN, of the Supreme Court of New Jersey, and THE STATE OF NEW JERSEY,

Cross-Respondents.

SUPPLEMENTAL BRIEF OF PETITIONERS

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SUPPLEMENTAL BRIEF OF PETITIONERS

This supplemental brief is in response to this Court's opinion in *Huffman* v. *Pursue*, —— U.S. ——, 43 *U.S.L.W.* 4379 (1975), delivered on March 18, 1975, and received by petitioners this morning.

ARGUMENT

Perusal of this Court's opinion in *Huffman* v. *Pursue*, serves to reaffirm petitioners' contentions. In *Huffman*, this Court reached the novel conclusion[1] that the strictures of *Younger* v. *Harris*, 401 U.S. 37 (1971), proscribed

[1] This Court noted that the question was posed but not decided in *Gibson* v. *Berryhill*, 411 U.S. 564 (1973). There, this Court found it unnecessary to resolve the issue because the necessary predicate to application of the abstention doctrine—the opportunity to raise and have timely decided by a competent state tribunal the federal issues involved—was lacking. Specifically, the appellees in *Gibson, supra*, had alleged and the district court had found, that the administrative process was so defective and inadequate as to deprive them of due process of law. This conclusion was based upon the undisputed fact that members of the administrative agency had prejudged the merits of the controversy before them and had adopted a position adverse to that advanced by the appellees. In point of fact, the State Board of Optometry had filed a complaint in the state courts against the appellees based upon allegations that they had engaged in "unprofessional conduct" which would justify revocation of their licenses. Having taken an adversary position, the Board had preconceived opinions with respect to the issues which it was required to resolve. So too, the district court concluded that members of the Board had a personal financial interest adverse to the appellees and were thus constitutionally disqualified for that reason. Significantly, this Court affirmed, but only on "the latter ground of possible personal interest." *Gibson* v. *Berryhill, supra* at 1698.

The facts in the instant case are in sharp and poignant contrast to those in *Gibson*. Here, respondent's allegations amount to nothing more than a charge that the New Jersey Supreme Court's official inquiry into whether disciplinary proceedings were to be conducted, pursuant to its constitutional and statutory mandate, served to compel him to testify. The complaint is barren of any allegation of personal animus, vindictiveness, bias or pecuniary interest on the part of the present members of the Supreme Court sufficient to require disqualification.

federal intervention under 42 U.S.C. §1983 in an ongoing state civil proceeding to test the constitutionality of a state nuisance statute on First Amendment grounds. Observing that actions under the contested statute were "more akin to a criminal prosecution than are most civil cases," this Court noted that federal intervention in the form of either injunctive or declaratory relief was manifestly inappropriate.

Relevant to the present inquiry was this Court's holding that exhaustion of state appellate remedies is a prerequisite to the exercise of federal equitable jurisdiction. Significantly, the exhaustion doctrine was considered applicable despite the appellee's claim that resort to Ohio's appellate courts would be "futile." As this Court aptly observed "considerations of comity and federalism which underlie *Younger,* permit no truncation of the exhaustion requirement merely because [a] party in the state court of general jurisdiction believes that his chances of success on appeal are not auspicious." *Huffman* v. *Pursue, supra* at 4385. Simply stated, this Court was unwilling to adopt a rule based upon "an assumption that state judges will not be faithful to their constitutional responsibilities."

These principles apply with greater force in this case. The Court of Appeals opinion constitutes an affront to the dignity of the entire State court system. It is predicated upon a prediction that members of New Jersey's judiciary will not obey the law they are bound to enforce. Simply stated, there is no reason to assume that members of the State's highest court will be so vindictive as to seek to ensure respondent's conviction.

CONCLUSION

That part of the opinion of the United States Court of Appeals for the Third Circuit denying injunctive relief should be affirmed and the judgment permitting federal intervention and requiring a hearing and declaratory relief should be reversed.

Respectfully submitted,

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